

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
FREDERICK TEAL,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 04-11634-RGS
)	
LUIS SPENCER,)	
)	
Respondent.)	
_____)	

**RESPONDENT'S MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM UPON WHICH
HABEAS RELIEF MAY BE GRANTED**

The respondent, through counsel, moves to dismiss this petition seeking a writ of habeas corpus for failing to state a claim upon which relief can be granted. In support of his motion, the respondent states that the petitioner has presented this Court with a mixed petition, having failed to exhaust the claim contained in ground one of his petition. Because the petitioner has not yet provided the state's highest court with the first opportunity to pass on the merits of this claim, the petition should be dismissed. 28 U.S.C. § 2254(b)-(c). The petitioner's other claim presents a Fourth Amendment claim that is barred by *Stone v. Powell*, 428 U.S. 465 (1976). The respondent reserves the right to submit a memorandum raising additional defenses, if necessary.

In support of this motion, the respondent relies upon a memorandum of law, Answer, and Supplemental Answer filed with this Motion.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s Susanne G. Reardon
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Dated: August 25, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached documents was served upon petitioner, Frederick Teal, 2 Clark Street, P.O. Box 43, Norfolk, MA 02056 by first class mail, postage pre-paid, on August 25, 2004.

/s Susanne G. Reardon
Susanne G. Reardon
Assistant Attorney General